IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O. O. C. J.

WRIT PETITION NO.1417 OF 2007

Sardar Amir Shaikh ..Petitioner.

Vs.

The Union of India and others ..Respondents.

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Mr. D.V. Gangal for the Petitioner.
Mrs. N.V. Masurkar for the Respondents.

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CORAM: **SWATANTER KUMAR, C.J. &**
DR. D.Y. CHANDRACHUD, J.

3rd October, 2007.

P.C. :

In the present Writ Petition, the Petitioner has challenged the correctness and legality of the order dated 31st December, 2001 imposing the penalty of censure and the order of the appellate authority dated 31st December, 2002 by which the appeal against the said order was rejected. The challenge to these two orders inter alia is also on the ground that principles of natural justice have been violated inasmuch as the enquiry officer while submitting his report found the Petitioner guilty of none of the articles of charges which were subject matter of the enquiry. The

conclusion of the enquiry officer in his report dated 16th October, 2001 is as under :

> "After considering say submitted by presenting officer, charged official and documentary evidence, I come to the conclusion that charges levelled against Shri S. A. Shaikh, Sr. Accountant o/o A.O. (TA) could not be proved."

It is not disputed before us that before the disciplinary authority recorded the findings contrary to the findings recorded by the enquiry officer in his report dated 16th October, 2001, the Petitioner was not afforded any opportunity to meet the reasons for difference of opinion of the disciplinary authority from the findings recorded by the enquiry officer. This itself is contrary to law and certainly vitiates principles of natural justice. However, without prejudice to their rights and contentions, counsel appearing for the Respondents upon instructions from the competent officer who is present in Court stated that they would recall both the orders of the disciplinary as well as the appellate authority and would afford an opportunity to the Petitioner to reply to the view of the disciplinary authority stating reasons of differences with the report

of the enquiry officer. In view of the statement made by the Respondents, we do not consider it necessary to discuss any other ground of challenge raised in the present petition. This Petition is disposed of with a direction that both the impugned orders dated 31st December, 2001 and 31st December, 2002 are hereby set aside. The disciplinary authority is free to proceed in accordance with law from the stage of submission of enquiry report to the disciplinary authority in accordance with the Service Rules.

CHIEF JUSTICE

DR. D.Y. CHANDRACHUD, J.